

A Task Force to Study Employee Misclassification

(SB 500 Ch. 378:7, Laws of 2008)

Minutes of the October 28, 2010 Meeting

Members Present:

Deb Stone	Ins Carrier
Jeff Goley	NH House of Representatives
Peter McArdle	Ins Carrier
Ron Ciotti	Non-residential construction
Lon Siel	NHES
Fred Kfoury	Central Paper
John Lighthall	NHDRA
Joe Donahue	CLMP
John Jackson	C Local 118
Cathy Bernhard	NHDOJ
Ellery Hathorn	DOL
Jim Young	NHID

(Others included Gary Wright (NHES) & Marie Vailanson (NHES))

Agenda

- (1) Acceptance of minutes from 09/2010 meeting*
- (2) Vote on motion from 09/30 meeting to keep the DOL's fraud fund under their control*
- (3) Review of draft report*
- (4) Any other business*

1. Called to order at 2:02pm. *McArdle* noted typo in 09/30 minutes. *McArdle* moved, *Hathorn* seconded to approve September minutes as amended. Unanimous vote in favor. *Stone* also read a notice of legislation currently waiting for PA Governor's signature relative to employee misclassification. (Provided by *Lighthall*; attached to minutes.)
2. *Stone* brought up the open motion from the 09/30 meeting. DOL had requested that the Task Force consider recommending that the fraud fund established under RSA 281-A:7 continue to be funded up to the \$400,000 total after which funds revert to the general fund. The way the statute reads, the entire fund reverts to the general fund after July 1, 2011. (see below) The motion would make the language of paragraph I.(a)(2) be the same effective July 1, 2011 as it is prior to July 1, 2011 – i.e. any amounts over \$400,000 revert to the general fund but up to \$400,000 they stay with DOL for fraud & compliance activities. *McArdle* stated that he supports the motion. No other discussion. The vote was unanimous in favor.

[Paragraph I(a)(2) effective until July 1, 2011; see also paragraph I(a)(2) set out below.]

I.(a)(2) There is hereby established a nonlapsing workers' compensation fraud fund in the office of the state treasurer. All funds collected under subparagraph I(a)(1) shall be deposited in such fund and continually appropriated to the commissioner of labor to be used for investigations and compliance activities required under this subparagraph and related sections pertaining to labor and insurance law. Any amounts over \$400,000 in the fund shall lapse into the general fund on June 30 of each year.

[Paragraph I(a)(2) effective July 1, 2011; see also paragraph I(a)(2) set out above.]

I.(a)(2) All funds collected under subparagraph I(a)(1) shall be deposited into the general fund.

3. *Stone* opened discussion on the draft report. She stated that *Donahue* had already reported a typo in the Stop Work Order section of the report, saying that the waiting period is 20 days rather than the 10 the Task Force agreed to. *Stone* stated this is already corrected in the draft. *Donahue* requested that the report be organized such that the final recommendations are separate from the balance of the report. *Stone* noted that there will be a separate section specifically for the two remaining final recommendations (SWOs and the fraud fund.) *Stone* asked whether there was anything missing from the report that should be included, either in the body of the report or as a separate appendix. *Donahue* suggested that the misclassification website should be mentioned again as a place to make reports and get information. *Ciotti* stated that he felt that a copy of the draft registration form be attached as an appendix. There was discussion regarding this; *Hathorn* reminded us that no final form was ever approved by the Task Force. *Donahue* made a motion that the registration form not be included; the vote was nine in favor and three opposed. The registration form will not be included in the final report. *Siel* suggested information be presented in reverse chronological order with the newest material on top. *Stone* agreed. *Ciotti* stated that he believes the material in Appendix B reads as if the items were all final recommendations, not just on the 'possible' list. *Stone* agreed to revise the appendix so that the list includes only numbered items instead of showing them as recommendations. *Stone* advised the Task Force that she envisions the final report being presented with the Mission Statement and Introduction first, then the final recommendations and member commentary, then the summaries of the meetings since the last report and then the appendices.

Stone asked for further changes, suggestions or discussion; there was none. She stated that she will complete the minutes for today's meeting along with a new draft of the report and send it out to members by 11/02. She requested that any corrections or changes, along with any additional member commentary, be submitted to her by 11/12. She will then send out a final draft of the report before publication. *Donahue* moved that the final report be accepted by the Task Force as written and amended in the next couple of weeks, subject to final review and an e-mail vote. The motion was seconded by *Goley*. The vote was ten in favor and two opposed.

4. *Siel* asked that the minutes reflect that the Chair, Deb Stone, was given a standing ovation at this meeting in recognition of all of her efforts and contributions to the Task Force. (***The Chair thanks the members very much.*)
5. No further meetings of the Task Force are scheduled. The meeting was adjourned at 2:25pm without objection.

Respectfully submitted,

Deb Stone, Chair

- **Pennsylvania's** lawmakers have sent the Governor a bill that would create fines and jail time for construction industry employers who misclassify employees as independent contractors. H.B. 400 was supported by organized labor, and defines criteria necessary to classify a worker as an independent contractor: (1) a construction worker must have a written contract spelling out the services to be performed, (2) be free from direction over the performance of those services, and (3) be customarily engaged in an independently established occupation that involves performance of those services. Then the bill lists six criteria to determine whether a worker is "customarily engaged" in an occupation: (1) the worker must have performed a similar service for someone else in the past and hold himself out to other as available to perform the service; (2) have the tools and equipment essential for the job; (3) maintain at least \$50,000 in liability insurance; (4) have a proprietary interest in the business through which he provides his services, (5) maintain a separate business location, and (6) make a profit or suffer a loss under the financial arrangement he has negotiated for providing his services. Supporters fought back an attempt to absolve general and prime contractors from liability for a subcontractor's misclassification. Employers who are guilty of a negligent violation face a fine of up to \$1,000, a penalty of up to \$1,000 for a first offense and \$2,500 for subsequent offenses, and an intentional violation is a criminal misdemeanor.